Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (Implementation of the Budget Act) Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991	CG Docket No. 02-278

Reply Comments of Robert Biggerstaff

Robert Biggerstaff submits these comments on the NPRM[1] dated May 6, 2016.

The industry comments are infused liberally with repetitions of examples (usually in tabular form) of "required" contacts under various government rules.[2]

After diligent research, I could find no governing rule that ***requires*** contact by robocall.[3] It is only the raw pecuniary interests of the industry that is the motivation here, and the raw pecuniary interests of the industry do not trump the rights of consumers.

The Commission has an obligation to ensure consumer protection when executing its role in administering consumer protection statutes like the TCPA and particularly when applying them to new modes of communications with unique problems that autodialers, robocalls, and text messages present. "The moving picture screen, the radio, the

[1] *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, FCC 16-57, CG Docket No. 02-278 (May 6, 2016) ("NPRM").

[2] *See Comments of Hope Now*, dated June 20, 2016 at 2-3; *Comments of the Mortgage Bankers Association*, dated June 16, 2016, at 9.

[3] As the Commission has done, I use the term "robocall" to mean all automated systems involved in phone calls, including autodialers ("ATDS"), artificial and prerecorded messages, and text messages.

newspaper, the handbill, the sound truck and the street corner orator have differing natures, values, abuses and dangers."[4] So do cell phones.

As the Court made clear in *Kovacs v. Cooper*, a speaker is not entitled to the cheapest method of distributing its messages. "That more people may be more easily and cheaply reached by [robocalls or text messages], is not enough to call forth constitutional protection for what those charged with public welfare reasonably think is a nuisance when other easy means of [calling] are open."[5] The comments on this docket show that people are sick of nonconsensual robocalls.

The Commission is correct to implement the Budget Act provisions in a way that exercises its discretion so to balance consumer protection with the industry's pecuniary motives. The industry has ample alternatives to reach consumers. If those methods, such as manually-dialed calls, are marginally more expensive, then that is a cost of doing business that is properly part of that business, and such a cost should not be shifted to consumers that are not part of that business. This particularly true in the example of calls to non-debtors due to both reassigned numbers, and the insatiable desire to the industry to do "skip tracing" which is fully known to the industry to return flawed data in a large percentage of cases (not to mention the fact that the industry intentionally calls non-debtors "looking for "the debtor, sometimes for no other reason than they have the same last name as the debtor or are residing at a former residence of a debtor.)

Agency Issues

The Commission noted that the most reasonable way to interpret the Budget Act is

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4 *Kovacs v. Cooper*, 336 U.S. 77, 97 (1949) (Jackson, concurring).

5 *Kovacs v. Cooper*, 336 U. S. 77, 89 (1949) (emphasis added).

to “ include calls made by creditors and those calling on their behalf, including their agents.”[6] If this is true, then the converse must also be true. If a caller benefits from the liability shield of the entity they are calling on behalf of, then that entity must be liable for the acts of that caller. Put another way, agency has to work both ways.

If a caller is retained as an independent contractor, they get no liability shield. If the caller is an agent of the creditor, then any liability that results from the calls has to be visited upon the creditor. Having seen many agreements between principles and robocallers, they always claim the robocaller is an independent contractor, with a wink and a nod, knowing that this is to free the principle of liability that will frequently accompany robocalls. In the same vein, a “do-not-call” request for robocalls to a cell phone must be communicated to the creditor as the creditor must be responsible for all subsequent calls, as is the case with existing Commission rules for calls to landlines.[7] Indeed, to eliminate ambiguity, I suggest that prior to any calls a creditor must expressly designate in writing (such as in a written contract) that a caller is an agent and not an independent contractor, in order for any liability shield based on the identity or status of the creditor can be invoked.

Thank you very much for your time considering my comments. I remain,

Sincerely

/s/ Robert Biggerstaff

Robert Biggerstaff
June 21, 2016

[6] NPRM at ¶15.

[7] *See generally*, 47 C.F.R. 64.1200(d)(3)